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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,552	04/13/2004	William J. Kennedy	05918-031009 / VGCP 2966	6249
26161	7590	02/07/2005	EXAMINER EASHOO, MARK	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			ART UNIT 1732	PAPER NUMBER

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/824,552

Applicant(s)

KENNEDY ET AL.

Examiner

Mark Eashoo, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 61-97 is/are pending in the application.
- 4a) Of the above claim(s) 61-83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 84-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claim group II, claims 84-97, in the reply filed on 26-NOV-2004 is acknowledged.

Claims 61-83 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected claim grouping, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 26-NOV-2004.

Information Disclosure Statement

The information disclosure statement filed 13-APR-2004 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. Accordingly, it has been placed in the application file and the information referred to therein has been considered as to the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 84-87, 92-95, and 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (US Pat. 4,794,028) or Fischer (US Pat. 4,872,243) in view of Studer (US Pat. 3,230,134).

Regarding claim 84:

Fischer '028 teaches the basic claimed process for making a strip-hook fastener, comprising: a base portion (Fig. 4); hook-form projections extending from the base portion (2:48-61 and Fig. 4); providing a cooled rotating forming roller having hook-forming cavities in its periphery to solidify the resin therein (2:20-47 and Figs. 2, 3, 6, and 7); applying molten resin to the forming roller (5:33-51); wherein a forming roller and pressure roll define a nip (Fig. 2); after cooling the molten resin, removing/stripping the hook-form projections from the cavities without opening the cavities (2:35-47); and passing the fastener structure about a stripping roll which is positioned at a point such that the web travel along a substantial arc along the forming roller (Fig. 3).

Fischer '243 teaches the basic claimed process for making a strip-hook fastener, comprising: a base portion (Fig. 4); hook-form projections extending from the base portion (2:47-59 and Fig. 4); providing a cooled rotating forming roller having hook-forming cavities in its periphery to solidify the resin therein (2:20-46 and Figs. 2, 3, 6, and 7); applying molten resin to the forming roller (5:30-48); wherein a forming roller and pressure roll define a nip (Fig. 2); after cooling the molten resin, removing the hook-form projections from the cavities without opening the cavities (2:35-47); and passing the fastener structure about a stripping roll which is positioned at a point such that the web travel along a substantial arc along the forming roller (Fig. 3).

Neither Fischer '028 nor Fischer '243 teach introducing a running length of a sheet material to a molten plastic under pressure wherein the fabric/screen becomes an integral part of a base portion. However, Studer teaches introducing a running length of a sheet material to a molten plastic under pressure wherein the sheet becomes an integral part of a base portion (2:14-26 and Figs. 1-2 and 6). It is noted that the sheet material of Studer is delivered to the resin at the point that the molten resin is applied to rollers (Fig. 1) and also progresses along at least a portion of a roll before being delivered to the molten resin (Fig. 1). Either Fischer '028 or Fischer '243 is combinable with Studer because they are from the same filed of endeavor, namely, forming plastic webs having integral upstanding projections thereon. At the time of invention, a person having ordinary skill in the art would have found it obvious to have provided a sheet material, as taught by Studer, in the process of either Fischer '028 or Fischer '243, in order to provide a reinforced support or base web.

Regarding claim 85-87, and 92:

Either Fischer '028 or Fischer '243 teach fastener elements, configured to engage loops, that overhang a continuous base layer (Figs. 2 and 4).

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Regarding claims 93-95 and 97: Either Fischer '028 or Fischer '243 teach a coextensive base layer (Figs. 2 and 4). Studer teaches a coextensive sheet material that forms a backing (Figs. 1-5). Fischer and Studer would have been combined for the same reasons as set forth above.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 84-97 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,744,080. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same subject matter is claimed by U.S. Patent No. 5,744,080. Specifically, Claims 1-13 of U.S. Patent No. 5,744,080 teach: a strip-like hook fastener product; introducing resin at a pressure nip into cavities of forming roller (claim 9); introducing a sheet/preformed material (claims 1 and 6); cooling/solidifying the resin on the forming roll (claims 1 and 7); stripping/withdrawing the fastener structure from a molding/forming roll (claims 1 and 6); various sheet materials including paper, foam, non-woven fabric (claim 2); and a loop material as the sheet/backing material (claim 3).

U.S. Patent No. 5,744,080 does not teach that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base. Nonetheless, if it is not intrinsic that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base then these would have been obvious modifications to a person of ordinary skill in the art in order to provide a strong uniform fastener product having fasteners that have hook, barbs, or caps that increase the mechanical interlocking strength of the fastener product.

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Claims 84-97 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,744,080. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same subject matter is claimed by U.S. Patent No. 5,744,080. Specifically, Claims 1-13 of U.S. Patent No. 5,744,080 teach: a strip-like hook fastener product; introducing resin at a pressure nip into cavities of forming roller (claim 9); introducing a sheet/preformed material (claims 1 and 6); cooling/solidifying the resin on the forming roll (claims 1 and 7); stripping/withdrawing the fastener structure from a molding/forming roll (claims 1 and 6); various sheet materials including paper, foam, non-woven fabric (claim 2); and a loop material as the sheet/backing material (claim 3).

Claims 1-13 of U.S. Patent No. 5,744,080 does not teach that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base. Nonetheless, if it is not intrinsic that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base then these would have been obvious modifications to a person of ordinary skill in the art in order to provide a strong uniform fastener product having fasteners that have hook, barbs, or caps that increase the mechanical interlocking strength of the fastener product.

Claims 84-97 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,260,015. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same subject matter is claimed by U.S. Patent No. 5,260,015. Specifically, Claims 1-20 of U.S. Patent No. 5,260,015 teach: a strip-like hook fastener product; introducing resin at a pressure nip into cavities of forming roller (claims 1 and 11); introducing a sheet/preformed material (claims 1 and 6); cooling/solidifying the resin on the forming roll (claims 1 and 11); stripping/withdrawing the fastener structure from a molding/forming roll (claims 1 and 11); various sheet materials including paper, foam, non-woven fabric (claim 2-7 and 12-17); and a loop material as the sheet/backing material (claims 8 and 18).

Claims 1-20 of U.S. Patent No. 5,260,015 does not teach that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base. Nonetheless, if it is not intrinsic that the base and sheet layers are continuous, coextensive or that the fastener

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elements/projections overhang the base then these would have been obvious modifications to a person of ordinary skill in the art in order to provide a strong uniform fastener product having fasteners that have hook, barbs, or caps that increase the mechanical interlocking strength of the fastener product.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Eashoo, Ph.D. whose telephone number is (571) 272-1197. The examiner can normally be reached on 7am-3pm EST, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

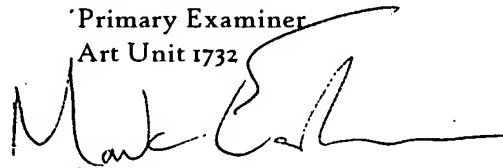
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3 February 2005

Mark Eashoo, Ph.D.

Primary Examiner

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A handwritten signature in black ink, appearing to read 'Mark Eashoo', written over the printed name and title.

03/Feb/05